IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6289 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAFATBHAI MURJIBHAI PARMAR THRO HIS WIFE SAVITABEN

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 28/08/2000

ORAL JUDGEMENT

The petitioner has filed this writ petition under Article 226 of the Constitution of India challenging the legality and validity of order of detention dated 11th October, 1999, passed by respondent no.2.

2. The detaining authority passed an order of detention under Sec.3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short "the Act") branding the detenu as "bootlegger" within the meaning of Sec.2(b) of the Act. For this, in the papers relating to grounds of detention, fact of about 10 prohibition cases have been narrated. Out of 10 cases, six cases have been shown as pending trial in criminal court, while rest of the four cases have been shown as pending investigation with the Investigating Officer. To strengthen the case for passing an order of detention on the ground that activities of the detenu are prejudicial to the maintenance of public order, the detaining authority has relied on the statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per that statements, first statement was recorded by the Police Inspector on 9th October, 1999 and the statement of second witness was recorded on 10th October, 1999. Both the statements were verified by the detaining authority on 11th October, 1999, and on that very day, the detaining authority passed an order of detention which is challenged in this Writ Petition.

3. Ms.K.U.Mishra has argued that looking to the facts and relevant dates of statements of two anonymous witnesses and verification thereof and the date of passing the order of detention, it is physically not possible for any person to apply his mind on the very same day. For this, she has placed reliance on the case of KALIDAS CHANDULAL KAHAR VS. STATE OF GUJARAT AND OTHERS, reported in (1993) 2 34(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising privilege under Sec.9(2) of the Act. Looking to the papers which relate to ten prohibition cases and two statements of anonymous witnesses which are relied on by the detaining authority, it was not possible to apply his mind to verify the statements more particularly for scrutiny of the facts stated therein. The detaining authority is expected to verify the statements on the point whether that statements are genuine or not and whether persons of whose statements are recorded are fictitious persons or not and whether that statements are bogus or not. For this type of verification, some time is necessary and for that exercise by the detaining authority, one has to go for perusal of said statements. Here in this case, facts are exactly similar to facts of authority cited by Ms. Mishra. Hence the order of detention is bad in law, illegal and same is required to be set aside.

4. Here in this case, none of the respondents has filed affidavit-in-reply, meaning thereby, they have not controverted the case of the petitioner. This Court has in Special Civil Application No.6322 of 1999 decided on 11/2/2000 deprecated the practice of not filing affidavit-in-reply in such type of cases. Thus, it appears that the respondents have not controverted the grounds under which the said order of detention has been attacked and challenged. Under the circumstances, the order of detention creates doubt about application of mind on the part of the detaining authority.

5. In view of what is stated hereinabove, the order of detention dated 11th October, 1999 (Annexure : A) passed by respondent No.2 with respect to detenu is quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required for any other criminal case. Rule is made absolute accordingly. Direct Service is permitted.

Date: 28/08/2000. (H.H. Mehta, J.)
ccshah